IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 1008 OF 2003

IN

SUM. SUIT NO. 2624 OF 2003

Sudarshan Vishwanath
Malpani and Ors. .. Plaintiffs.

vs.

Vinod Kumar Saboo .. Defendants.

Mr. Mahendra Shah a/w Mrs. U.K. Shah
i/by K.D. Shah for the plaintiffs.
Mr. Uday Bobade i/by D.P. Guchiya
for defendants.

CORAM : S.U. KAMDAR, J.
DATE : 16th August, 2005.

P.C.

. The present suit has been filed as a summary suit based on an agreement dated 2.8.2000 being Exhibit "C" to the plaint at page 27. Under the said Exhibit C on page 27 a statement has been recorded by and between the parties in respect of the business which was carried out in partnership under the deed of partnership dated 25.3.1994. By

the said partnership deed, the plaintiff and the defendants were carrying on business of brokerage and they were holders of a National Stock Exchange Card for carrying on business of brokerage. It seems that dispute and differences arose between the parties and they were settled under an agreement dated 2.8.2000. Under clause 5 of the said agreement it was inter alia provided that the defendants will pay to the plaintiffs a sum of Rs. 42.4 lacs in two months from that date and it is further provided under clause 10 a cheque of Rs. 2.5 lacs in part payment towards the said amount of Rs. 42.5 lacs has been issued on 3.8.2000. The said agreement dated 2.8.2000 at the bottom provides that on receipt of the entire amount, the plaintiff will retire from the said partnership firm and will execute a document as may be necessary for completion of the retirement from the said firm 'Money Mint'.

2. It is an admitted position that save and except Rs. 2.5 lacs no other payment has been made by the defendant to the plaintiff and there is an outstanding amount of Rs. 40 lacs. However, the learned counsel for the plaintiff has inter alia contended that no order should be passed and has raised the following defences.

i) Firstly, it has been contended that the

partnership agreement between the parties contains an arbitration clause under clause 22 thereof. It has been contended that in view of clause 22 of the said agreement containing arbitration clause, the defendants had taken out a notice of motion for stay of the suit and/or referring the dispute for arbitration under section 8 of the Arbitration and Conciliation Act, 1996. In my opinion, the said contention is totally misconceived and without any merit. It is for the simple reason because the arbitration clause is in the partnership agreement to resolve the the disputes and differences between the parties arising in respect of the said partnership business. It is admitted position that the differences and disputes which arose in respect of the said partnership business have been resolved by a settlement agreement dated 2.8.2000 and thus there are no surviving disputes and differences under the deed of partnership dated 25.5.1994 which require to be determined by the arbitrator under the provisions of the Arbitration and Conciliation Act, 1996. In view thereof, in my opinion, the said arbitration clause in an agreement dated 25.5.1994 does not apply at all as there are no surviving disputes under the said partnership agreement.

ii) The next contention raised by the learned counsel for the defendant is that it was contemplated under an agreement for settlement dated

2.8.2000 that National Stock Exchange membership will be transferred to the defendant and no such transfer has taken place and, therefore, they are not liable to make payment as contemplated under clause 5 thereof. Firstly no such arrangement has been recorded in the settlement agreement dated 2.8.2000 which is Exhibit C to the plaint. In any event, in my opinion, the contention lacks merit because it is an admitted position that after the retirement of the plaintiff from the suit firm on payment of Rs. 42.5 lacs the firm is continued by the defendant and it is therefore, the defendant who is entitled to the said NSE membership and it is open to him to get the same transferred to his name or it continues to remain in the name of the plaintiff in which he is the sole person continuing. In view thereof, it is not possible to accept the aforesaid contention that the payment should be made by the defendant till and until such transfer of the membership takes place. In view thereof, the said contention is also rejected.

3. Thereafter the learned counsel for the defendant drew my attention to the last para. of the settlement agreement Exhibit "C" to the plaint which inter alia provides that Malpanis who are plaintiffs herein to retire completely from the said partnership firm. However, the said para on page 27 also indicates that the same has to be done on the

necessary payment is made as provided under clause 5 thereof. Admittedly, the defendant has not paid the said amount. On the contrary, the plaintiff has in their affidavit in reply page 11 para. 17 has categorically stated that they are willing to execute all necessary documents for their retirement from the firm if the defendant makes the aforesaid payment. However, the defendant is not wiling to make the aforesaid payment and, therefore, the question of the plaintiff executing the documents which is required to be done after payment is received, cannot arise.

4. The last contention raised by the larned counsel for the defendant is that the suit is for specific performance of an agreement dated 2.8.2000 being Exhibit "C" to the plaint. The said contention is merely required to be stated, to be rejected. The said agreement Exhibit C to the plaint dated 2.8.2000 in terms provides for liquidated sum as due and payable by the defendant tot he plaintiff and in view thereof, I am required to pass the following order.

> The defendant to deposit in this Court a sum of Rs. 40 lacs within a period of four weeks from today. If the said amount is deposited the same to be invested in any nationalised bank in fixed deposit initially

for a period of one year and thereafter from time to time till further orders of this Court. If the amount is not deposited, the plaintiff will be entitled to obtain decree for none deposit.

5. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from today. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.